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Confidential communications

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Third, Decide what you are going to do with the information after it has been obtained.

The practical aspect of the situation calls not only for the intensive applica-

tion of energy in the execution of the work as planned, but ability to change quickly the methods and program if conditions change or difficulties unforeseen suddenly loom up.

Confidential Communications

THE high ideals of a physician impose upon him the obligation of holding in confidence any information concerning his patients which may come to him in the course of professional relations. Lawyers, ministers and accountants are guided by the same principle of obligation.

The statutes confer upon doctors and lawyers the right of refusing to divulge information which they acquire in the course of service to patients and clients. Ministers are likewise protected. But the accountant, who is frequently in the confidence of his client to a degree equal to that of other professional men, is omitted from the statutes.

Such omission may not be attributed to a difference of opinion regarding the propriety of placing the accountant under the statutes, but rather, in all probability, to the fact that accountancy as a profession had not yet received recognition when the statutes in question were framed.

Mr. John B. Geijsbeek, L.L.B., M.C.S., C.P.A., in the August, 1911, number of the *Journal of Accountancy*, referring to the subject of confidential communications, writes as follows:

"The latter doctrine pertains only to the question whether a person can be permitted or compelled by law to divulge the communications between persons who stand in a confidential or fiduciary relation to each other, or who on account of their relative situation are under a special duty of secrecy and confidence. In other words, the question involved here is whether secrets between parties can be forced from them for the sake of

justice, public policy, or the good order of society. Such a confidential relation in law exists between parties in which one is bound to act for the benefit of the other, or who, on account of their relative situation, are under a special duty of secrecy and fidelity. Such a relation may also exist when a continuous trust is reposed by one person in the skill and integrity of another, or the peculiar relations which exist between parties such as client and attorney, principal and agent, principal and surety, landlord and tenant, parent and child, guardian and ward, ancestor and heir, husband and wife, and others. Such a relation certainly exists between the accountant and his client, although not specifically named."

Notwithstanding the lack of specific provision in the statutes, accountants generally have taken unto themselves the obligation of confidence and have refused to disclose to third parties, except with the permission of the client, information which has come to them in the course of professional engagements.

A certain well-known trust company sent a representative to a firm of certified public accountants seeking information as to the financial standing of a client who was a prospective borrower. For some reason the bank chose this course rather than that of seeking the information from the client. The request was denied. The trust company was offended. The accountants lost one, if not more, engagements as a result. Yet the bank would require the approval of a depositor before giving out the amount of his bank

balance to a certified public accountant retained by the depositor to audit his accounts.

Accountants frequently have claimed and been accorded professional privilege when appearing as experts or as witnesses in cases of litigation, even in so small a matter as disclosing names of clients.

An accountant appearing as a witness before the Lockwood Investigating Committee in New York recently was not so fortunate, as, upon claiming professional privilege, "the same as doctor, lawyer, or priest," and refusing to produce working papers covering the audits of a client under investigation by the committee, he was adjudged in contempt.

No penalty has yet been imposed in this case so far as can be ascertained. In fact, it is difficult to find cases where accountants taking a similar position have been found in contempt, much less penalized. The indications seem to be that while some courts are loath to recognize the right of professional privilege on the part of accountants because the statutes do not so provide, they hesitate to raise the issue by citing for contempt and imposing a penalty, because such action would be against public policy.

The circumstances surrounding the case

in which the Lockwood Investigating Committee cited for contempt may have justified the position taken by the committee. The benefit which would have accrued to the public generally would possibly have been greater, had the financial affairs of the client been exposed, than the detriment suffered by the client in such exposure. And this perhaps was a peculiar case which should not be allowed to cloud the general principle of confidential relations.

The working papers of an accountant are his property. They are not the property of the client. They contain information relating to the client's affairs. A trust to guard the information is imposed upon the accountant. Any request for the papers is a request for the information. The request for the papers should be denied, except the client consent to their delivery, first on the ground that the accountant has no papers belonging to the client, and second, that if he had such papers he would have no right to give them up without the client's consent.

May the time speedily come when the matter will be regulated by statute rather than go limping along with the support of common law practice.

Cost or Market

AMONG the expressions which fall glibly from the tongues of those who know, those who think they know, and those who have no idea as to the meaning of the phrase, is the one "cost or market, whichever is lower."

The phrase did not originate with the Treasury Department. It has been in use among accountants for many years. But the Treasury Department has, in connection with taxes, been the cause of its increased use.

The phrase has its application chiefly

to inventories. It is scarcely ever applied to securities although the same principle holds in connection therewith. Inventories are of course of various kinds. It is therefore important that an expression like "cost or market" should not be used carelessly or indiscriminately.

The goods of a trading concern should, for inventory purposes, be priced at cost unless in the market, at the date of the inventory, the goods may be replaced at a cost which is lower than that at which they were originally acquired. Such is the